

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

TRACI MILLER,

Plaintiff,

v.

KILOLO KIJAKAZI, Acting Commissioner
of Social Security,

Defendant.

8:21CV447

**MEMORANDUM
AND ORDER**

This matter is before the Court on Plaintiff Traci Miller's ("Miller") Petition for Attorney's Fees (Filing No. 17) pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d). The Court can award "fees and other expenses" to a prevailing party in any civil action "brought by or against the United States," unless the Court determines the government's position was "substantially justified or that special circumstances make an award unjust." *Id.* § 2412(d)(1)(A).

On May 5, 2022, the Court entered judgment in favor of Miller and remanded the case for further administrative proceedings pursuant to sentence four of 42 U.S.C. § 405(g) (Filing No. 16). Miller timely requested \$3,347.82 in attorney fees after the judgment was entered and the appeal period ran. *See Pottsmith v. Barnhart*, 306 F.3d 526, 527-28 (8th Cir. 2002).

The \$3,347.82 includes (1) 1.1 hours of work from attorney Wes Kappelman ("Kappelman") in 2021, billed at \$217.54 per hour; (2) 11.3 hours of work from Kappelman in 2022, billed at \$231.49 per hour; (3) 0.7 hours of work from attorney Timothy Cuddigan ("Cuddigan") in 2021, billed at \$207.78 per hour; and (4) 0.7 hours of work from Cuddigan in 2022, billed at \$231.49 per hour. Miller also requests reasonable costs in the amount of \$402 as filing fee reimbursement. *See* 28 U.S.C. § 2412(a).

Defendant Kilolo Kijakazi, Acting Commissioner of Social Security (“Commissioner”), “does not object to [Miller’s] request for fees” nor Miller’s request for an award of \$402 in costs.¹ The Commissioner points out “[i]t is important to properly characterize costs” since expenses and costs are paid out of different funds, and only items specifically identified in 28 U.S.C. § 1920 are compensable as costs.

After careful review of the record and the parties’ submissions, the Court finds Miller is a prevailing party entitled to an EAJA fee award of \$3,347.82 paid by the Social Security Administration. Miller has satisfied the statutory requirements under the EAJA, *see* 28 U.S.C. § 2412(d)(1)(A), and her attorney-fee request is timely and reasonable. Additionally, the Court awards Miller \$402 in costs.

Based on the foregoing,

IT IS ORDERED:

1. Plaintiff Traci Miller’s request for attorney fees and costs (Filing No. 17) pursuant to the Equal Access to Justice Act is granted.
2. Miller is awarded attorney fees of \$3,347.82 and costs of \$402, subject to any administrative offset required to satisfy any pre-existing debt Miller may owe to the United States.
3. The attorney-fee award is payable directly to Miller by the Social Security Administration. *See* 28 U.S.C. § 2412(d)(4). The reimbursement of costs is payable directly to Miller out of the judgment fund administered by the Secretary of the Treasury. *See* 28 U.S.C. § 2412(c)(1) (citing 28 U.S.C. § 2414).
4. If consistent with the Commissioner’s and the Secretary of Treasury’s practices, the EAJA payments shall be made payable to Miller, with payment delivered to Kappelman Law Firm at its address of record in this case.
5. A separate judgment will issue.

Dated this 21st day of October 2022.

¹The Commissioner notes that while the attorney-fee award is payable to Miller, not her attorney, it can be sent to her attorney as a practical matter. *See Astrue v. Ratliff*, 560 U.S. 586, 589-90 (2010).

BY THE COURT:

A handwritten signature in black ink, reading "Robert F. Rossiter, Jr." with a stylized flourish at the end.

Robert F. Rossiter, Jr.
Chief United States District Judge